SUPREME COURT OF THE U.S.
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JAMES

SUPREME COURT

OF THE

United States.

THE TOWNSHIP OF LINCOLN
Plaintiff in Error,
vs.
THE CAMBRIA IRON COMPANY

OCTOBER TERM 1880, No 189.

Brief for Defendant in Error.

M. J. SMILEY,
Counsel for Defendant in Error.

Dygert, Buff & Rice, Legal and Commercial Printers, Grand Rapids, Mich.
1880.

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STATEMENT OF THE CASE.

The action in this case was by the defendant in error upon four bonds of one thousand dollars each, and four coupons of one hundred dollars each.

The declaration alleged that said bonds and coupons were issued by the township defendant under and by virtue of an act of the Legislature of the State of Michigan, to aid in the construction of the Chicago and Michigan Lake Shore Railroad, and that the plaintiff was the owner and holder of them for value.

The defendant appeared and pleaded in abatement that there had been no service of the writ. That Brown on whom the writ had been served as Supervisor of the township was not such Supervisor.

The defendant also plead in bar under a rule of court adopted by the Supreme Court of Michigan allowing a plea in bar and in abatement at the same time.

On December 24th, 1875, the plaintiff demurred to said plea in abatement, filed its said demurrer, and served a copy on defendant's attorney.

On the 3d day of February, 1876, the plaintiff entered the defendant's default for not joining in said demurrer, the rule of court requiring the joinder in demurrer to be filed within ten days after filing the demurrer.

On the 8th day of February, 1876, said default was made absolute.

On the 29th day of May, 1876, a trial was had upon the plea in bar and a verdict rendered by a jury in favor of the plaintiff for the sum of $6,273.32, and judgment was rendered thereon.

The defendant in the court below brings a writ of error to this court.

I.

In the first and second assignment of error it is claimed that the first and second counts of the plaintiff's declaration are insufficient, because they do not allege and set forth a vote of the electors of the township and other proceedings authorizing the township to issue the bonds.

We contend that this is not necessary. The declaration is in the most approved form and would be quite sufficient upon demurrer. It was so held by Judges Dillon and Dundy, in Railroad Company vs. Otoe County, I. Dillon, 338.

In Clement on Corporate Securities, p. 86, it is said: "If the action is upon municipal bonds or coupons, negotiable in form, the pleader need not allege when suing in the Federal Courts, the election or other facts showing a compliance with the preliminary steps prescribed by law as conditions precedent to the issuance of the bonds. He need only allege that they were issued by the municipality and the law presumes their regularity."

The decisions of this Court necessarily imply the same doctrine. This Court has held steadily since the case of Conns vs. Knox County, 21 How., 539, that it is only necessary to show on the trial that there existed lawful authority to issue the bonds, and that the municipality, by its proper officers, did issue them, to make out a case.

The declaration in this case however alleges that the township defendant issued the bonds and coupons sued upon under and in pursuance of the act of the Legislature authorizing it to issue bonds.

See Record p. 5, folios 10, 12.

II.

The proof of service of the demurrer upon the defendant's attorney was sufficient. It was such that the Court acted upon it and entered the defendant's default, and such default was never set aside, nor was any motion ever made

to set the same aside. It remained upon the record from February 3d, until the trial May 29th, nearly four months, and then a trial was had upon the merits without any objection.

III.

In reply to the fourth assignment of error, it is sufficient to say that the default for not joining in the demurrer was confined to the plea in abatement.

See record p. 11, folio 28.

IV.

In reply to the fifth assignment it is enough to call attention to the fact that the defendant did have a trial upon the merits.

V.

The verdict of the jury is sufficient to sustain the judgment.

The jury is made to say by the verdict as entered by the clerk, "That the defendant is guilty in manner and form as alleged in the declaration." It is evident from the whole verdict that the word guilty is a mere clerical mistake or misprision of the clerk in entering it. The clerk mistook the form of the verdict. Although he pronounces the defendant guilty, he also says in manner and form as alleged in the declaration. The guilt alleged in the declaration consisted in issuing certain bonds and coupons sued upon and not paying them at maturity.

This verdict is clearly within the statute of amendments.

Section 954 Revised Statutes of the United States, pro-

vides: No summons, writ, declaration, returns, process, judgment or other proceedings in civil causes in any court of the United States, shall be abated, arrested, quashed or reversed for any defect or want of form, but such court shall proceed and give judgment according as the right of the cause and matter in law shall appear to it, without regarding any such defect or want of form, except those which in cases of demurrer the party demurring specially sets down together with his demurrer as the cause thereof, and such court shall amend every such defect or want of form, other than those which the party demurring so expresses.

This statute applies to the first point as well as to the last. It applies as well to verdicts as to other proceedings.

Parks vs. Turner, 12 How. 39, 46.
Roach vs. Hulings, 16 Peters, 321.
Lyman vs. Becannon, 29 Mich., 466.
Olcott vs. Hanson, 12 Mich., 452.
Shaw vs. Railroad Co., 101 U. S. 557.

In Parks vs. Turner above cited, the action was upon a note, and the verdict of the jury was in these words: "We the jury, find for the plaintiff," and thereupon the Court rendered a judgment for the amount of the note with interest. Upon writ of error to this Court it was held that the verdict was sufficient.

M. J. SMILEY,
Counsel for Defendant in Error.